

March 20, 2003

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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DECISION ON APPEAL OF SHORT SUBDIVISION REVISION

SUBJECT: Department of Development and Environmental Services File No. **L00S0046/L02RE032**

ELFENDAHL SHORT PLAT
Short Plat

Location: South side of Northeast Tolt Hill Road/across the street from
249th Avenue Northeast

Appellant: Lynne Elfendahl, *represented by*
Harold Peterson and Jon Nelson
Peterson Consulting Engineers
4030 Lake Washington Boulevard NE, Ste. 200
Kirkland, WA 98033
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King County: Department of Development and Environmental Services
Current Planning Section, *represented by*
Rich Hudson
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner:

Deny the appeal
Deny the appeal
Deny the appeal

EXAMINER PROCEEDINGS:

Hearing Opened:
Hearing Closed:
2003

March 13, 2003
March 13,

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Surface water design manual adjustment
- Landslide hazard drainage area
- Examiner jurisdiction

FINDINGS, CONCLUSIONS AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On August 2, 2002, the Department of Development and Environmental Services granted preliminary approval for short subdivision L00S0046. Condition 7.B.5 of that approval required that sensitive area tract C have a minimum 50 foot buffer and 100 foot building setback line. Tract C is a 40% (\pm) steep slope hazard area that occupies approximately the easterly one third of the subject property. This slope is approximately 170 feet high, and is mapped by King County as a steep slope hazard area.
2. On December 13, 2002, King County issued a short subdivision revision in response to the Applicant's request that condition 7.B.5 of the August 2, 2002 preliminary approval be modified.

The December 13, 2002 revision deleted condition 7.B.5 of the August 2, 2002 decision, and provided that one of the following conditions of approval shall apply:

- A. A buffer width of 25 feet along the top of the steep slope plus a building setback width of 15 feet as proposed in the geotechnical report is acceptable, if all storm water from new impervious surfaces including roads, driveways, patios and roof drains are collected and put in a tightline disposal system that extends through the landslide hazard area to an acceptable discharge point as determined by DDES at the time of engineering review.
- B. If a tightline disposal system as described in the paragraph above is not feasible, all storm water from new impervious surfaces including roads, driveways, patios and roof drains shall be dispersed with rock pads or trenches in an area where the slope does not exceed 15%, and where flows from the discharge points can traverse through a minimum of 100 feet of undisturbed vegetation before reaching the top of the steep slope. All structures must also be located at least 100 feet from the top of the steep slope. A 50 foot wide area immediately adjacent to the top of the slope shall be designated as a steep slope buffer and be included in the steep slope hazard area tract/or area.
3. On April 10, 2002, the Applicant had submitted a request for an adjustment from core requirement No. 1 of the 1998 King County Surface Water Drainage Manual. That requirement is for all surface and storm water runoff from a project to be discharged at the

natural location. Section 2 of core requirement No. 1 provides that if a proposed project, or any natural discharge area within a project, is located within a landslide hazard drainage area and, in fact, ultimately drains over the erodable soils of a SAO-defined landslide hazard area with slopes steeper than 15%, a tightline system must be provided through the landslide hazard area to an acceptable discharge point. An exception from this requirement is permitted if DDES determines that a tightline system is not physically feasible or will create a significant adverse impact. Surface Water Drainage Manual pages 1-17 and 1-18.

On June 27, 2002, the Department of Development and Environmental Services approved an adjustment, subject to conditions. Condition No. 3 of the adjustment is:

“Impervious areas associated with each building site that includes, but is not limited to, parking area, garage and home rooftop shall be connected to a dispersal system downhill from the building site. The dispersal trench shall not be located any closer than 100 feet from the 50-foot steep slope buffer.” June 27, 2002, letter to Harold F. Peterson, PE, from Department of Development and Environmental Services (exhibit 1).

4. An appeal of the Department’s action on an adjustment from the surface water drainage manual must be made to the Director of the Department that issued the decision within 15 days of the date of issuance. No appeal was taken from the Department’s June 27, 2002 drainage adjustment decision.
5. The Applicant has appealed the Department’s report and decision granting the short subdivision revision, issued December 13, 2002. It is the position of the Applicant that Tract C is not a landslide hazard area. Therefore, she contends, the property is not, in fact, a landslide hazard drainage area.

If the property is not within a landslide hazard drainage area, and does not, in fact, drain over the erodible soils of a landslide hazard area, the requirement for a tightline contained in core requirement 1.2.1.2 of the Surface Water Drainage Manual is not applicable. If not applicable, the request for the drainage adjustment was unnecessary, and the conditions of the adjustment would have no force or effect.

6. The proposed development is within a landslide hazard drainage area shown on the King County Landslide Hazard Drainage Areas Map. This map was adopted with the King County Surface Water Design Manual as a public rule, effective October 29, 1998. King County Public Rule PUT8-3-2(PR). However, the adopted map states, “. . . Where differences occur between what is illustrated on this map and actual site conditions, the actual site conditions shall govern. . .”
7. It is uncontested that the eastern third of the property is a steep slope area, and that surface water from the top of the slope (the area proposed to be developed) flows over that slope.

The Department’s engineering geologist testified that there is a major erosional feature not far from the subject property, at the area known as “Pepper Canyon”. He testified that dense sand, such as found on the subject property, does erode on slopes, and can have layers of clay within it. He observed some small surficial slides on the site, as well as an old slide area.

The Applicant presented the opinion of her soils engineer that the steep slope on the eastern portion of the property is stable, and that a minimum buffer of 25 feet, with a 15 foot

building setback from the crest of the steep slope, could be used without adversely impacting the current stability of the site.

The steep slope portion of the site has soil classified AkF by the Soil Conservation Service, which presents a severe potential for erosion when disturbed or exposed. The slope is defined by the Sensitive Areas Ordinance as an erosion hazard area. KCC 21A.06.415.

8. The preponderance of the evidence is that the steep slope (Tract C) is correctly mapped as a landslide hazard area and that the subject property is a landslide hazard drainage area.

CONCLUSIONS:

Based upon the foregoing findings, the Examiner concludes:

1. The development proposed upon the subject property is within a landslide hazard drainage area, as defined by the King County Surface Water Design Manual and depicted in the landslide hazard drainage area map adopted by King County Public Rule.
2. Core requirement no. 1 of the King County Surface Water Design Manual requires discharge of surface water at the natural location. An adjustment was granted by the Department of Development and Environmental Services to permit a variance from that requirement, subject to stated conditions. The King County Hearing Examiner does not have jurisdiction to modify the terms of the surface water design manual adjustment.
3. The condition of short subdivision approval appealed by the Applicant to the Examiner accurately reflects the surface water design manual adjustment. Any modification of the December 13, 2002 Short Subdivision Revision by the Hearing Examiner would have no force or effect as a modification of the conditions of the surface water design manual adjustment.

DECISION: The appeal by the Applicant of the December 13, 2002 short subdivision revision is **DENIED**.

ORDERED this 20th day of March, 2003

James N. O'Connor
Hearing Examiner Pro Tem

TRANSMITTED this 20th day of March, 2003, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

MINUTES OF THE MARCH 13, 2003 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L00S0046/L02RE032

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Rich Hudson, Curt Foster, Larry West and Mark Bergam, representing the Department; Harold Peterson, representing the Applicant, and Ted Schepper.

The following exhibits were offered and entered into the record:

Exhibit No. 1	DDES File No. L02RE032
Exhibit No. 2	DDES Preliminary Report dated March 13, 2003
Exhibit No. 3	Site Plan with Applicant and LUSD's Setback Notations
Exhibit No. 4	LUSD's GIS Map Information – Landslide Hazard Drainage and Landslide Hazard Areas
Exhibit No. 5	Applicant's Geologic Assessment/Report by Terra Associates, Inc. Dated February 26, 2003
Exhibit No. 6	Letter to Harold Peterson from James Sanders and Jim Chan dated June 27, 2002 Re: Elfendahl Short Plat SWM Adjustment Request
Exhibit No. 7	Sensitive Areas Map Folio, King County Washington, December 1990 – Landslide Hazard Areas; dated March, 2003
Exhibit No. 8	Definitions Section from 1998 Surface Water Design Manual, pg. 9
Exhibit No. 9	Copy of Surficial Geologic Map of the Skykomish and Snoqualmie Rivers Area Defining Soil Conditions
Exhibit No. 10	Section 1.2 – Core Requirements from 1998 Surface Water Design Manual, Pg. 1-28
Exhibit No. 11	Section 5.2 – Flow Control BMPS from 1998 Surface Water Design Manual, Pgs. 5-13 – 5-16
Exhibit No. 12	Section C.2 – Flow Control BMPS from 1998 Surface Water Design Manual, Pgs. C-16 – C-18
Exhibit No. 13	Elfendahl Short Plat Depicting a Typical Lot
Exhibit No. 14	Applicant's Proposed Changes to Conditions of Approval
Exhibit No. 15	King County Landslide Hazard Drainage Areas Map